THE HONOUABLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.2487 of 1995

Between:

G.Manohar. **.. PETITIONER**

AND

Director of Intermediate Education and others.

.. RESPONDENTS

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

ORDER:

Appointment of the 4th respondent as Record Assistant in the third respondent college, without considering the petitioner's case for appointment to the said post, and approval thereof by the first respondent in proceedings dated 10-11-1990 is questioned in this writ petition as arbitrary, illegal and without jurisdiction. The petitioner seeks a consequential direction to third respondent to promote him as Record Assistant with effect from 16-08-1998 with all consequential monetary benefits.

Brief facts, to the extent necessary, are that the petitioner was appointed as a Lab Attender in the Vivekananda Junior College, Warangal, on a consolidated pay of Rs.150/- p.m. with effect from 12-09-1981. Subsequently on 29.06.1984, the petitioner was selected as an attender by a duly constituted Selection Committee and continued in service thereafter as a regular attendar. The petitioner's post of attender was admitted to grant-in-aid with effect from 16-04-1990 vide proceedings, of the Director of Higher Education, A.P., Hyderabad, dated 06-10-1990. The 4th respondent was appointed as an attender in the 3rd respondent college, along with the petitioner, on a consolidated pay of Rs.150/- per month. The 4th respondent, despite seeking regular appointment as an attender, was not selected to any of the two posts of attenders by the duly constituted Selection Committee which met on 22-06-1984 and consequently he ceased to be in the service of the college. Petitioner would contend that the educational qualification prescribed for appointment as a Record Assistant is a pass in X class, that he had passed X class in the year 1985 and was therefore eligible to be appointed as a Record Assistant. G.O.Ms.No.680, Education, dated 12-09-1980, was issued wherein directions were given to the effect that recruitment to fill up upper categories of posts amongst non-teaching staff in private aided colleges shall be considered only after the cases of internal candidates for promotion are considered and that in cases where internal candidates are not suitable for next promotion, the same must be intimated to the candidates in writing and vacancies filled up by direct recruitment later. Petitioner would contend that he was duly qualified and eligible for promotion to the post of Record Assistant in the third respondent college. He would submit that a vacancy in the post of Record Assistant arose on 08-10-1986 consequent upon the resignation of Sri V.Ramanaiah, that despite his representations on several dates, he was not considered for appointment to the post of Record Assistant and that the fourth respondent was appointed as Record Assistant on 16-08-1988 contrary to G.O.Ms.No.680, dated 12-09-1980. Petitioner would contend that neither was a

press notification issued calling for applications for appointment as Record Assistant nor was the Employment Officer called upon to sponsor suitable candidates for appointment to the post of Record Assistant.

The petitioner made a representation on 20-08-1988 to the Regional Joint Director of Higher Eduation, Warangal, bringing to his notice the provisions of G.O.Ms.No.680, dated 12-09-1980. The Regional Joint Director of Higher Education addressed letter dated 27-09-1988 to the correspondent of the college requesting him to submit his remarks in the matter immediately. Another letter dated 03-11-1988 was issued requesting him to issue correct orders forthwith following the rules. The petitioner again submitted a representation on 03-09-1988.

The State Government issued G.O.Ms.No.333, dated 21-10-1989, admitting the 3rd respondent college to grant-in-aid. Pursuant thereto, the Director of Collegiate Education issued proceedings dated 06-10-1990 admitting eight members of the teaching staff and seven members of non-teaching staff to grant-in-aid with effect from 16-04-1990. The 4th respondent was not admitted to grant-in-aid at that point of time. Subsequently, vide proceedings dated 06-10-1990, the appointment of the 4th respondent as Record Assistant was approved and he was admitted to grant-in-aid with effect from 16-04-1990. The petitioner submitted representations on 15-07-1991 and on 13-04-1992. The General Secretary, A.P. Aided Colleges Non-teaching Staff Association, Hyderabad, espoused his cause and submitted a representation to the first respondent on 21-09-1993. The 1st respondent addressed letter dated 30-10-1993 requesting the correspondent of the college to offer his remarks. Reminders were sent on 27-12-1993 and on 23-05-1994 to the correspondent of the college. The correspondent of the college sent his remarks on 20-08-1994 to the Regional Joint Director of Higher Education, Warangal, wherein, he stated that (i) the

petitioner was appointed as attender on 12-09-1981; (ii) he had passed S.S.C; (iii) due to resignation of Sri V.Ramanaiah, Record Assistant, on 08-10-1986, the vacancy had arisen; (iv) the petitioner had submitted representations dated 18-11-1986; 12-02-1987; 17-08-1987 and 08-08-1988, seeking promotion as Record Assistant; (v) G.O.Ms.No.680, dated 12-09-1980 was not considered; (vi) due to fresh appointment of 4th respondent who earlier worked for some time, the petitioner's application was not considered and (vii) through circular resolution by the Managing Committee, the said vacancy was filled. The Regional Joint Director of Higher Education, Warangal, in his letter dated 01-09-1994 informed the 1st respondent that the 3rd respondent had confirmed the petitioner's earlier representations and that the action of the 3rd respondent in appointing the 4th respondent was irregular. An Enquiry Officer was appointed by the 1st respondent to enquire into the matter and the enquiry officer submitted his report on 09-09-1994. The 1st respondent, vide letter dated 21-10-1994, requested the 3rd respondent to state as to why the petitioner's request for appointment as Record Assistant had not been considered even though he was eligible to be appointed to the said post. Petitioner alleges harassment by the 3rd respondent pursuant thereto which is said to have resulted in his approaching this court by way of the present writ petition.

A counter affidavit is filed on behalf of respondents 1 and 2 wherein it is stated that since the college was admitted into grant-in-aid only with effect from 16-04-1990, pursuant to G.O.Ms.No.333, dated 21-10-1989 and as the petitioner's post along with others were admitted to grant-in-aid only with effect from 16-04-1990, recruitment or promotion of any employee prior thereto was not governed by the terms of G.O.Ms.No.680, dated 12-09-1980. It is stated that if the petitioner was aggrieved thereby, he ought to have questioned it soon thereafter. It is stated that G.O.Ms.No.680, dated 12-09-1980, was issued to private aided colleges, whereas

the third respondent college wherein the petitioner was working was an unaided college and was admitted to aid only in the year 1990. It is stated that the Director of Intermediate Education, in his proceedings dated 16-11-1990, had issued orders admitting, eight teaching and seven non-teaching staff of Vivekananda Junior College, Matwada, Warangal District, to aid with effect from 16-04-1990.

The 4th respondent filed his counter affidavit, wherein he would state that his termination from service earlier was itself illegal and considering the fact that he ought to have been continued since he was senior to the petitioner herein, the 3rd respondent had appointed him as a Record Assistant instead of the petitioner herein.

Sri D. Linga Rao, learned counsel for the fourth respondent, would contend that the 4th respondent, pursuant to the orders appointing him as a Record Assistant, has been in service for more than 15 years and has just a few years of service left and there was no justification at this distance of time in removing him from the post of Record Assistant. Learned counsel would submit that while the petitioner continues to be employed in the post of attender, setting aside the appointment of the 4th respondent as Record Assistant, would result in his being thrown on to the streets resulting in untold misery and distress to his family. Learned counsel would place reliance on ***P.V.S.V.PRASADA RAO v. ANDHRA UNIVERSITY***, ***ROSHNI DEVI*** v. ***STATE OF HARYANA, H.C.PUTTASWAMY*** v. ***HON'BLE CHIEF JUSTICE OF KARNATAKA*** and ***K.S.DHAN RAJ v. OSMANIA UNIVERSITY*** in support of his submission that in view of the long lapse of time, this court would not normally set aside appointments made earlier, even if it came to the conclusion that the appointment made earlier was illegal.

Sri K.Harinath, learned counsel for the petitioner, would submit that from the preamble to G.O.Ms.No.680, dated 12-09-1980 it is clear that the G.O. applies to private/aided colleges. Learned counsel would refer to the text of the order in G.O.Ms.No.680 dated 12.09.1980, which reads as under:

> "Government direct that direct recruitment to fill up the upper categories of posts in non-teaching staff in private/aided colleges should be considered only after the cases of internal candidates for promotion are considered. The management of private/aided colleges may be advised that in cases where the internal candidates are not suitable for next promotion the same may be intimated to the candidates in writing and vacancies filled up by direct Recruitment. These orders should be strictly adhered to hereafter."

It is clear therefrom that the said Government order applies when posts of non-teaching staff in private/aided colleges are sought to be filled up. The hyphen used between the words "private" and "aided" makes it clear that the said G.O. applies both to private colleges and to aided colleges and not merely to private aided colleges. Submissions to the contrary, in the counter affidavit filed on behalf of the respondents 1 and 2, has necessarily to be rejected. All the earlier proceedings of the Authorities concerned, including the proceedings of the Director of Higher Education, dated 13-05-1987, 27-10-1980 and 06-10-1990 etc., would clearly reveal that the authorities were also of the view that the said G.O. applies to private un-aided colleges also. Sri K. Harinath, learned counsel of the petitioner, would place reliance on ***VIPIN KUMAR v. DISTRICT INSPECTOR*** and ***B.S.B.G.TILAK v. G.R.V.PRASADA RAO*** in support of his submission that when an order of appointment is held to be illegal, such appointment is automatically set aside and this court ought not to exercise its jurisdiction under Article 226 of the Constitution of India on sympathetic grounds.

G.O.Ms.No.680, dated 12-09-1980 applies to private un-aided colleges also and since the petitioner was the only eligible internal candidate, the 4th respondent not being in the service of the 3rd respondent at the relevant point of time, the 3rd respondent was required to consider the case of the petitioner for appointment as a Record Assistant before resorting to direct recruitment. In any event, the 3rd respondent, without inviting applications of all eligible candidates to fill up the available vacancy chose to appoint the fourth respondent as a Record Assistant merely on the ground that prior to 1984 he had continued in service as an attendar for a short period. In its proceedings, dated 17/20-08-1994, the 3rd respondent admits the fact that the petitioner's case was not considered in accordance with G.O.Ms.No.680, dated 12-09-1980 and the reasons given therefor are that the 4th respondent, had earlier worked in the institution for sometime. Appointment of the 4th respondent, made contrary to G.O.Ms.No.680, dated 12-09-1980, is therefore required to be set aside and since the petitioner was the only internal candidate and he possessed the requisite qualification of X class pass for appointment to the post of Record Assistant, he is entitled to be appointed as a Record Assistant.

Now the judgments cited across the bar in ***VIPIN KUMAR v. DISTRICT INSPECTOR, ALLAHABAD*** promotion to the post of Lecturer was required to be made in the manner provided under the Rules. Following its earlier Division Bench judgments, the Allahad High Court held that direct recruitment was permissible only when an eligible teacher was not available in the institution for being considered for promotion. The method of recruitment which an institution is required to follow, has necessarily to be those which are prescribed by way of Rules applicable to such institutions, it cannot be accepted as a blanket proposition that in every case, direct recruitment can only be resorted to only when candidates are not available for being

promoted.

In ***B.S.B.G. TILAK*** v. ***G.R.V.PRASADA RAO***, the Division Bench of this court following the judgment of the Apex Court in ***S.S.SODHI v. STATE OF PUNJAB*** held that the post of a junior lecturer could not be filled up by direct recruitment when suitable candidates were available for promotion. In **S.S.Sodhi** (9 supra), sub-rule (1) of Rule 8 of the Punjab State Agricultural Marketing Board (class I) Service Rules, 1988, which was relied upon, provided that posts could be filled up by direct recruitment or by transfer only if suitable candidates were not available for appointment by way of promotion. It is only because the rules so stipulated, that the Apex Court held that direct recruitment should be resorted to only after internal candidates were considered for promotion and not prior thereto.

In ***EMPLOYER IN RELATION TO THEMANAGEMENT OF G.C. OF BCCL v WORKMEN REPRESENTED BY BIHAR COLLIERY KAMBAR UNION***, the Supreme Court on finding that a person was appointed without fulfilling the qualification in the year 1973, for having not satisfied the requirement of age, set aside the order of his regularization. Sri K.Harinath, learned counsel for the petitioner, would submit that since the Supreme Court had set aside an illegal order 18 years thereafter and had chosen not to permit the employee therein to continue in service on sympathetic grounds, this court should also not be weighed by considerations of sympathy and once the order appointing the 4th respondent as a Record Assistant is set aside as being contrary to the Rules, a direction must follow appointing the petitioner as a record assistant.

In ***P.V.S.V.PRASADA RAO*** (1 supra), the Full Bench of this court following the judgment of the Apex Court in H.C.PUTTASWAMY (AIR 1991 SCC 295).

REKHA CHATURVEDI v. UNIVERSITY OF RAJASTHAN (1993 SUPP (3) SCC 168). ROSHNI DEVI v. STATE OF HARYANA (1998) 8 SCC 59), even after finding that the selection process was illegal, declined to set aside the order of appointment. Similar view has taken by this court in ***K.S.DHAN RAJ v OSMANIA UNIVERSITY, HYDERABAD*** (2004 (3) ALT 259 (D.B.).

Sri D. Linga Rao, learned counsel for the 4th respondent, would submit that since the 4th respondent has been working in the 3rd respondent college as a Record Assistant for more than 15 years and since he has just a few more years of service left before he attains the age of superannuation, he should be permitted to continue as a Record Assistant, as the petitioner, who is younger in age, could always be appointed as a Record Assistant thereafter.

From the facts stated above it is clear that soon after the 4th respondent was appointed as a Record Assistant, the petitioner started submitting representations to the authorities concerned questioning the action of the 3rd respondent in appointing the 4th respondent as a record assistant contrary to the orders issued by the Government in G.O.Ms.No.680 dated 12.09.1980. These representations were submitted not only to the authorities but also to the college. Consequent thereto, the authorities called for remarks from the college. The fact that the 4th respondent was appointed, without following the procedure prescribed in G.O.Ms.No.680, dated 12-09-1980, is also admitted by the 3rd respondent in his proceedings dated 17/20-08-1994. I see no reason, therefore to non-suit the petitioner on the ground of delay or latches. Once it is held that the order of appointment of the 1st respondent is illegal and that the petitioner was eligible to be appointed to the said post, denying him the benefit of being considered for appointment to the post of Record Assistant, in terms of G.O.Ms.No.680, dated 12-09-1980, would not be justified. Ends of justice would

be met if the respondents were directed to consider the case of the petitioner for appointment to the post of Record Assistant in terms of G.O.Ms.No.680, dated 12-09-1980 and, if found suitable, to be so appointed as a Record Assistant. Since both the posts of Record Assistant and Attendar have already been admitted to grant-in-aid, in the consequent vacancy of attender, which will arise as result of the petitioner being appointed as a Record Assistant, the case of the 4th respondent could be considered and he may be continued in service as an attender.

I see no justification in the request of Sri K.Harinath, learned counsel for the petitioner, that the petitioner be given the benefit of differential wages from the date on which the 4th respondent was appointed as a Record Assistant. Accepting this submission would necessitate directing the Government to provide grant-in-aid to a post for which aid had already been released earlier. It would also not be fair to direct that the amount be recovered from the 4th respondent. The only relief to which the petitioner is entitled, if he is considered fit for appointment to the post of Record Assistant, is for being given the benefit of notional increments, calculated from the date on which the 4th respondent was appointed as a Record Assistant, till date and to be fixed in the appropriate scales of pay applicable to the post of Record Assistant. The 4th respondent shall also be entitled for being fixed in the applicable scales of pay of an Attender.

The writ petition is accordingly disposed of. No order as to costs.

_____

03-03-2006

Prv